

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

MAXIE MCNABB,)	
)	
Plaintiff)	CIVIL ACTION NO:
)	2:06-0664-MHT
v.)	
)	
SANDERS LEAD COMPANY, INC.)	
)	
Defendant.)	

**PLAINTIFF'S MOTION FOR RECONSIDERATION
OF PLAINTIFF'S MOTION FOR EXTENSION OF TIME**

COMES NOW, the Plaintiff, Maxie McNabb, in the above styled cause of action, by and through his undersigned counsel of record, pursuant to Rule 6(b) of the Federal Rules of Civil Procedure, and hereby notifies the Court and respectfully seeks the Court's approval of the Plaintiff's Motion for Extension of Time in which to file his response to Defendant's Motion for Summary Judgment and to complete discovery in the above styled case. As grounds for this motion the Plaintiff would state as follows:

1. Pursuant to the Court's original Scheduling Order, discovery is due in this case by June 29, 2007.
2. On January 17, 2007, the Plaintiff served Plaintiff's First Interrogatories and Request for Production of Documents on the Defendant, to which the Defendant has responded.
3. On April 26, 2007, the Defendant served the Plaintiff with Defendant's First Interrogatories and Request for Production of Documents, which were due by May 29, 2007.
4. On May 25, 2007, the Defendant filed its Motion for Summary Judgment accompanied by a Memorandum of Law in Support of same. On May 29, 2007, the Plaintiff asked

for and received a two-week extension within which to tender the discovery requested by the Defendant.

5. On May 31, 2007, this Court ordered that any response to Defendant's Motion for Summary Judgment must be submitted by June 18, 2007. The Plaintiff will not be able to comply with this deadline as Plaintiff's counsel has scheduling conflicts which will interfere with his ability to take depositions he needs to respond to the Defendant's motion and to draft a response within the allotted time.

6. Specifically, Plaintiff's counsel has the following conflicts: an Eleventh Circuit Mediation on June 8, 2007 in *Matthews v. City of Dothan*, 07-10409-FF, depositions scheduled in Chicago, Illinois on June 13, 2007 in *Dean v. City of Harvey*, 05-CV-2454, a deposition scheduled on June 19, 2007 in *Holified v. Embassy Suites Hotel*, CV-06-PWG-4721-S, and depositions scheduled on June 26 & 27, 2007 in *Chapman v. Imerys, Inc.*, CV-1:06-01972-VEH.

7. On June 4, 2007, Plaintiff's counsel discussed with Defendant's counsel whether the Defendant opposed the grant of such a motion. Defendant's counsel at that time expressed that they did not want to consent to such a motion but that they would probably not file a formal opposition. Plaintiff's counsel then inquired as to what the Defendant could agree to put in his motion and was instructed that he could only state that the parties had conferred, which is what Plaintiff's counsel did.

8. On June 7, 2007, this Court issued an order denying the Plaintiff's motion because it did not state whether counsel for all other parties agreed or disagreed with the grant of such an extension.

9. On June 7, 2007, the Plaintiff again called and emailed Defendant's counsel

regarding the extension issue and the Court's order. This time Defendant's counsel affirmatively stated that they opposed the grant of such an extension. Plaintiff's counsel is now renewing his request that this Court grant Plaintiff an extension within which to complete discovery and respond to Defendant's Motion for Summary Judgment.

10. Pursuant to Rule 6(b)(1) of the Federal Rules of Civil Procedure Courts may, for cause shown, order an enlargement of a period within which an act is required to be performed if the request is made before the expiration of the period originally prescribed. *Farrington v. Benjamin*, 100 F.R.D. 474 (D.V.I. 1984). An application under Rule 6(b)(1) is normally granted in the absence of bad faith or prejudice to the adverse party. *Keoheler v. Dodwell*, 215 F.3d 1319, 2000 WL 709578 (4th Cir. 2000).

11. The Plaintiff has not been dilatory in prosecuting his case and is not requesting this extension to delay or misuse the Court's time. Additionally, this request is being made before the expiration date set by the Court for the Plaintiff to file his response to the Defendant's Motion for Summary Judgment and before the expiration of the discovery deadline. Furthermore, no prejudice will inure to the Defendant.

12. Based on the foregoing, the Plaintiff respectfully requests that this Honorable Court grant him a thirty day extension of time in which to complete discovery and file his response to Defendant's Motion for Summary Judgment, up to and including July 30, 2007. If the Court is not inclined to extend the discovery period, Plaintiff requests an additional fourteen days up to and including July 2, 2007 in which to file his response to Defendant's Motion for Summary Judgment.

Respectfully submitted,

/s/Roderick T. Cooks
Attorney for the Plaintiff

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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing document on all persons listed below by CMF/Electronic Mail and/or U. S. Mail, postage prepaid and addressed to them as follows:

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Done this the 7th day of June, 2007.

s/Roderick T. Cooks
Of Counsel